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### Symposium: Of Salmon, the Sound, and the Shifting Sands of Environmental Law. A National Perspective with a Look Forward at the Career of Bill Rodgers and the Power of Ideas

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## **SYMPOSIUM**

### **OF SALMON, THE SOUND, AND THE SHIFTING SANDS OF ENVIRONMENTAL LAW**

#### **A NATIONAL PERSPECTIVE WITH A LOOK FORWARD AT THE CAREER OF BILL RODGERS AND THE POWER OF IDEAS**

The University of Washington School of Law celebrated the first forty years of Professor William H. Rodgers's<sup>1</sup> career on April 20–21, 2007, at William H. Gates Hall in Seattle, Washington. This symposium brought together nationally renowned legal scholars, practicing attorneys, environmental activists, tribal leaders, law students, and many other friends and colleagues of Professor Rodgers.<sup>2</sup> They came primarily to pay tribute to one of the founders of environmental law and perhaps its most inspiring champion. But resourceful and humble as he is,<sup>3</sup> Professor Rodgers seized this opportunity to get people thinking about the current state of environmental law and brainstorming its next steps. The result was a medley of forward-thinking scholarship reflecting an understanding of the past and the cutting edge work done by so many others.

This edition of the Washington Law Review is primarily derived from that symposium and contains tributes to Professor Rodgers as well as articles, essays, and comments on various topics in environmental law. Anyone who knows Professor Rodgers would expect no ordinary law conference or mundane law review edition in his honor. Indeed, the presentations at the symposium and the pieces in this issue exemplify some of the very attributes he continually inspires in his students and colleagues—including passion, commitment, and unabashed originality.

David Getches<sup>4</sup> opened the symposium with a discussion of the Boldt treaty fishing decisions, an issue that Ron Whitener's tribute also picks

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1. Stimson Bullitt Professor of Environmental Law, University of Washington School of Law.

2. Organizers and participants informally referred to the event as "Rodgersfest."

3. Displaying his slight discomfort with the personal accolades, Professor Rodgers remarked at the symposium, "This is wonderful—hey, it's not every day that you get to attend your own funeral."

4. Dean and Raphael J. Moses Professor of Natural Resources Law, University of Colorado.

up on. Michael Axline<sup>5</sup> demonstrated the reemergence and contours of common law tort actions in describing his representation of Big Water against Big Oil. Howard Latin<sup>6</sup> challenged the conventional thinking on how to respond to climate change. Stewart Jay<sup>7</sup> told the inside story of *Tennessee Valley Authority v. Hill*<sup>8</sup> from the perspective of the law clerk assisting with the case. Many others contributed to the discussion, including professors Robert Anderson,<sup>9</sup> William Burke,<sup>10</sup> and Svitlana Kravchenko,<sup>11</sup> scientists David Montgomery<sup>12</sup> and Usha Varanasi,<sup>13</sup> and community leaders Wick Dufford,<sup>14</sup> Alix Foster,<sup>15</sup> Rollie Geppert,<sup>16</sup> Kathy Fletcher,<sup>17</sup> Patti Goldman,<sup>18</sup> Roger Leed,<sup>19</sup> Melanie Rowland,<sup>20</sup> and Ken Weiner.<sup>21</sup> Former students of Professor Rodgers also participated, including Karl Forsgaard,<sup>22</sup> Mickey Gendler,<sup>23</sup> Will Honea,<sup>24</sup> Ross MacFarlane,<sup>25</sup> Rachel Pascal Osborne,<sup>26</sup> Alan Stay,<sup>27</sup> Douglas Steding,<sup>28</sup> Bud Walsh,<sup>29</sup> and Miranda Wecker.<sup>30</sup>

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5. Attorney, Miller Axline & Sawyer, Sacramento.

6. Professor of Law, Rutgers University School of Law.

7. Professor of Law, University of Washington School of Law.

8. 437 U.S. 153 (1978).

9. Professor of Law, University of Washington School of Law.

10. Professor Emeritus, University of Washington School of Law.

11. Adjunct Professor of Law, University of Oregon Law School.

12. Professor of Geomorphology, University of Washington.

13. Northwest Fisheries Science Center.

14. Attorney, Seattle.

15. Reservation Attorney, Swinomish Indian Tribe.

16. The Ecosystems Foundation.

17. Executive Director, People for Puget Sound.

18. Managing Attorney, Earthjustice Seattle Office.

19. Attorney, Law Office of Roger M. Leed P.S.

20. Attorney, NOAA Office of General Council.

21. Attorney, K&L Gates, Seattle.

22. Attorney, Washington Forest Law Center.

23. Attorney, Gendler & Mann, Seattle.

24. Civil Deputy, Skagit County Prosecutor's Office.

25. Attorney, Nossaman Guthner Knox & Elliott LLP.

26. Executive Director, Center for Environmental Law and Policy.

27. Reservation Attorney, Muckleshoot Indian Tribe.

28. Attorney, Stoel Rives LLP, Seattle.

29. Attorney, Davis Wright Tremaine LLP, San Francisco.

30. Washington State Fish and Wildlife Commission.

Several of the participants prepared pieces for this issue that reflect their personal contributions to environmental law and their gratitude to Professor Rodgers. The tribute pieces speak volumes about his impact on the field, its most influential practitioners, and its beneficiaries. John Bonine<sup>31</sup> provides insight into Professor Rodgers's dynamic career, extraordinary character, and impact on people's lives by drawing on numerous vignettes and comments from colleagues. Richard Lazarus<sup>32</sup> aptly compares Professor Rodgers to television's Captain Planet with a review of their mutual superpowers. Ron Whitener<sup>33</sup> tells his personal story of Professor Rodgers's work for treaty fishing rights and its impact on the Squaxin Island Tribe of Puget Sound.

This issue also contains topical essays on a variety of environmental matters of local and national importance. Hope Babcock<sup>34</sup> describes an overlooked environmental problem in the Chesapeake Bay. Donna Christie<sup>35</sup> writes about the failure of environmental law to protect our oceans. Holly Doremus<sup>36</sup> explains the challenge of dealing with uncertainty in environmental legal decisionmaking, and Dale Goble<sup>37</sup> evaluates the successes and failures of the Endangered Species Act. Oliver Houck<sup>38</sup> offers a thought-provoking assessment of the core challenge of practicing natural world law in a society constantly striving to control. Michael Robinson-Dorn<sup>39</sup> initiates a dialogue on how best to prepare future environmental lawyers for dealing with the enormous challenges ahead. Finally, Dan Tarlock<sup>40</sup> explores the vital role of land use regulation in environmental protection.

In addition to pieces contributed by symposium participants, this issue includes an informative article by Michael Blumm<sup>41</sup> and Sherry Bosse

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31. Professor of Law, University of Oregon School of Law.

32. Professor of Law, Georgetown University Law Center.

33. Assistant Professor of Law, University of Washington School of Law.

34. Professor of Law, Georgetown University Law Center.

35. Elizabeth C. & Clyde W. Atkinson Professor of Law, Florida State University College of Law.

36. Professor of Law, University of California Davis School of Law.

37. Margaret Wilson Schimke Distinguished Professor of Law, University of Idaho College of Law.

38. Professor of Law, Tulane University Law School.

39. Assistant Professor of Law, University of Washington School of Law.

40. Professor of Law, Chicago-Kent College of Law.

41. Professor of Law, Lewis and Clark Law School, Northwestern School of Law.

surveying U.S. Supreme Court Justice Anthony Kennedy's environmental decisions while on the Court.

Three student members of the Washington Law Review also took part in this issue by writing comments on environmental topics: Michael Gelardi chronicles the use and misuse of Federal Land and Water Conservation Fund funding; Kelly Seaburg writes about state failure to develop total maximum daily loads (TMDLs) under the Clean Water Act; and Nicole Tadano explores the meaning of the phrase, "significant portion of the range" in the Endangered Species Act.

The Washington Law Review is pleased to present this symposium issue, and we hope the articles contained herein will both educate and inspire as Professor Rodgers has done for more than forty years. We would like to sincerely thank our authors and our editorial staff for all of their hard work and dedication to the issue.

*Ashley Peck*

Symposium Editor